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IN THE MATTER OF THE )
SIDNEY LANDFILL SUPERFUND SITE )
)
Amphenol Corporation and ) ADMINISTRATIVE ORDER
AlliedSignal Inc., )
)
Respondents. ) U.S. EPA INDEX NO.
) II-CERCLA-96-0204
)
Proceeding Under Section 106(a) of the )
Comprehensive Environmental Response, )
Compensation, and Liability Act of 1980,)
as amended (42 U.S.C. § 9606(a)). )
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ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

1. This Order directs Amphenol Corporation and AlliedSignal Inc. (hereinafter, "Respondents") to perform the remedial design for the remedy described in the United States Environmental Protection Agency's ("EPA's") September 28, 1995 Record of Decision for the Sidney Landfill Superfund Site (the "Site") located in the Towns of Masonville and Sidney, Delaware County, New York and to implement the design by performing the remedial action. This Order is issued to Respondents by EPA under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B.

II. FINDINGS OF FACT

2. The Site is located on the east side of Richardson Hill Road at the boundary between the Towns of Masonville and Sidney, Delaware County, New York. The Site includes an inactive landfill.

3. The Site was used for waste disposal from approximately December 1, 1967 to approximately October 31, 1972. Industrial, commercial and municipal wastes were disposed of at the Site.

4. Based upon a study conducted by the New York State Department of Environmental Conservation ("NYSDEC") from 1985 to 1987, it was determined that the Site was contaminated with hazardous substances.

5. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 30, 1989.

6. EPA has completed a Remedial Investigation and Feasibility Study ("RI/FS") of the Site to determine the nature and extent of contamination at and emanating from the Site and to evaluate remedial alternatives. The RI indicated the presence of various hazardous substances -- including, but not limited to, pesticides, including DDT and its breakdown products, and polychlorinated biphenyls (PCBs) -- in surface soils and sediments. Groundwater sampling also detected various hazardous substances, including trichloroethene (TCE), 1,1,1-

trichloroethane (TCA), and their breakdown products, along with other volatile organic compounds (VOCs), such as toluene, xylene, and carbon disulfide. Surface water sampling indicated the presence of hazardous substances, including TCE and PCBs. Leachate emanating from the landfill was also found to contain a number of hazardous substances, including VOCs and PCBs.

7. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the proposed plan for remedial action at the Site on July 29, 1995, and provided an opportunity for public comment on the plan.

8. EPA has selected a remedy for the Site, documented in a Record of Decision ("ROD") issued on September 28, 1995. The remedy selected in the ROD includes excavating and relocating the waste from the Can and Bottle Dump Area to the adjacent North Disposal Area; constructing four independent closure caps which are consistent with the requirements of New York State 6 NYCRR Part 360 over the North Disposal Area, the White Goods Disposal and Alleged Liquid Disposal Areas (capped together), the Southeast Disposal Area, and the Southwest Disposal Area, and the construction of four individual chain-link fences; extracting contaminated groundwater from the bedrock aquifer in the vicinity of monitoring well MW-2S (located just east of the North Disposal Area, where floating product was detected), followed by air-stripping or other appropriate treatment, and discharge to surface water; taking steps to secure institutional controls (the placement of restrictions on the installation and use of groundwater wells at the Site and restrictions on the future use of the Site in order to protect the integrity of the caps); and long-term monitoring of groundwater, surface water, and sediments. The ROD also provides for a contingent remedy, which includes Site-wide bedrock groundwater extraction and treatment. Specifically, after the construction of the four caps, and the extraction and treatment of the contaminated groundwater in the vicinity of monitoring well MW-2S for five years, the results of semi-annual bedrock groundwater monitoring will be evaluated using trend analysis and possibly modeling of the bedrock aquifer to determine whether it appears that the groundwater quality in the bedrock aquifer would be restored to acceptable levels through natural attenuation cost-effectively and within a reasonable time frame. Should the trend analysis and/or modeling show that groundwater quality in the bedrock aquifer would likely not be restored within a reasonable time frame by natural attenuation alone, then Site-wide bedrock groundwater extraction and treatment may be conducted.

9. EPA's ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

10. At a manufacturing facility in Sidney, New York, the Bendix Corporation generated wastes that contained hazardous substances, which were subsequently disposed of at the Site.

11. The Bendix Corporation arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). Respondents are successors in interest to the Bendix Corporation, and are thus responsible parties under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

12. On December 13, 1995, EPA issued a notice letter to Respondents inviting them to agree to undertake the Remedial Design/Remedial Action ("RD/RA") at the Site. Respondents did not agree to conduct the RD/RA.

13. Actual or threatened releases of hazardous substances at and from the Site, if not addressed by implementing the response actions selected in the ROD, may present an imminent and substantial endangerment to the public health, welfare or the environment.

III. CONCLUSIONS OF LAW

14. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

15. Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. Respondents are liable parties as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

17. The substances listed in paragraph 6 are found at the Site and are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). These hazardous substances have been released at and from the Site into the environment.

18. The disposal of hazardous substances at the Site constitutes a "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

19. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

IV. NOTICE TO THE STATE

20. Notice of this Order has been given to NYSDEC in accordance with Section 106 of CERCLA, 42 U.S.C. § 9606.

V. DETERMINATION

21. Based on the FINDINGS OF FACT and CONCLUSIONS OF LAW set forth above and the entirety of the administrative record, the Regional Administrator has determined that the release or threatened release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

VI. ORDER

22. Based on the foregoing, Respondents are hereby ordered, jointly and severally, to comply with the following provisions, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

VII. DEFINITIONS

23. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order, or in attachments to or documents incorporated by reference into this Order, the following definitions shall apply:

- a. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601 et seq.
- b. "Day" means a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business on the next working day.
- c. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- d. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- e. "Institutional Controls" shall mean land and/or water use restrictions which may include, but need not be limited to, restrictions in the form of contractual agreements or deed restrictions.

- f. "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, published at 55 Fed. Reg. 8666 (1990), and codified at 40 C.F.R. Part 300, including any amendments thereto.
- g. "NYSDEC" means the New York State Department of Environmental Conservation.
- h. "Operation and Maintenance" or "O&M" means those activities required under this Order for the purpose of maintaining the effectiveness of the measures taken in the Remedial Action (as defined below) following the implementation of those measures.
- i. "Order" means this Administrative Order and all appendices attached hereto and listed in Section XXVII. In the event of a conflict between this Order and any appendix, this Order shall control.
- j. "Party" or "Parties" means the United States of America and/or Respondents.
- k. "Performance Standards" means those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in or referenced in the ROD and the Statement of Work (which is attached as Appendix II hereto) or which are otherwise approved by EPA in writing during the course of the Work. Requirements promulgated or modified after the issuance of the ROD may become Performance Standards pursuant to Section 300.430(f)(1)(ii)(B) of the NCP.
- l. "Record of Decision" or "ROD" means the Record of Decision document issued by EPA on September 28, 1995 (and all attachments thereto) in which the remedy for the Site was selected by the Regional Administrator of EPA, Region II. The ROD is attached hereto as Appendix I, and is incorporated herein by reference.
- m. "Remedial Action" or "RA" means the remedy authorized by the ROD, as further delineated in this Order, and in the various EPA-approved plans referred to below.
- n. "Remedial Design" or "RD" means those activities to be undertaken by Respondents to develop the final "Remedial Design Report" or "RD Report", including, but not limited to, the final plans and specifications and other components and requirements for the Remedial

Action pursuant to the EPA-approved plans referred to below.

- o. "Respondents" means Amphenol Corporation and AlliedSignal Inc.
- p. "Site" means the Sidney Landfill Superfund Site, encompassing approximately 74 acres, and located on the east side of Richardson Hill Road in the Towns of Masonville and Sidney, Delaware County, New York, and depicted generally on the map attached as Figure 1.
- q. "State" means the State of New York.
- r. "Waste Material" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2) or (3), above.
- s. "Work" means all work and other activities required by and pursuant to this Order, including, but not limited to, implementation and Operation and Maintenance of the Remedial Action, and the preparation of the schedules, plans and reports required hereunder to be submitted in connection therewith.

VIII. NOTICE OF INTENT TO COMPLY

24. Respondents shall provide, not later than five (5) days after the effective date of this Order, written notice to EPA's Remedial Project Manager ("RPM") stating whether they will comply with the terms of this Order. If Respondents do not unequivocally commit to perform the Work as provided by this Order, they shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondents' written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of Respondents' assertions.

IX. PARTIES BOUND

25. This Order shall apply to and be binding upon Respondents and their directors, officers, employees, agents, successors and assigns. Respondents are jointly and severally responsible for carrying out all activities required by this Order. No change in

the ownership, corporate status, or other control of Respondents shall alter any of the Respondents' responsibilities under this Order.

26. Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, subcontractor, laboratory or consultant retained to perform any Work under this Order, within five (5) days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms and conditions of this Order. With respect to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible to the United States for compliance with this Order and for ensuring that their contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

X. WORK TO BE PERFORMED

27. Respondents shall give EPA fourteen (14) days advance notice of all field activities to be performed pursuant to this Order.

28. All of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a professional engineer licensed in the State of New York (hereinafter, the "Supervising Contractor"), the selection of which shall be subject to approval by EPA. Respondents' Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Respondents, as the "practice of engineering" is defined at Section 7201 of the New York State Education Law, must comply with all applicable New York State legal requirements regarding the practice of professional engineering within the State of New York, including, but not limited to, all applicable requirements of the New York State Education Law and Articles 15 and 15-A of the Business Corporation Law. At least fourteen (14) days prior to the initiation of the Work, Respondents shall notify EPA, in writing, of the name, title, and qualifications of the Supervising Contractor proposed to be used in carrying out the Work. If at any time Respondents propose to change their Supervising Contractor, Respondents shall notify EPA, in writing as above, and shall obtain approval from EPA before the new

Supervising Contractor performs, directs or supervises any work under this Order.

29. EPA will notify Respondents in writing of its approval or disapproval of a proposed Supervising Contractor. If EPA disapproves of the selection of any contractor as Supervising Contractor, Respondents shall submit to EPA a list of contractors (which does not include the contractor previously disapproved by EPA), including the qualifications of each contractor, that would be acceptable to them within thirty days of receipt of EPA's disapproval of the contractor previously selected. EPA will provide written notice of the names of the contractor(s) that it approves. Respondents may select any approved contractor from that list and shall notify EPA of the name of the contractor selected within 21 days of EPA's designation of approved contractors.

30. Scope of Work. Respondents shall implement the Statement of Work ("SOW") which is attached hereto as Appendix II and incorporated herein by reference. The Work to be performed by Respondents pursuant to this Order shall, at a minimum, achieve the requirements of the ROD (including, but not limited to, the Performance Standards) and be performed in a manner consistent with this Order. Nothing in this Order or the plans or other documents required to be submitted pursuant to this Order, or EPA's approval of those plans or other documents, constitutes a warranty or representation of any kind by EPA that compliance with those plans and this Order will achieve the requirements of the ROD, and such compliance shall not foreclose EPA from seeking performance of additional work to achieve the Performance Standards or other requirements of the ROD.

XI. FAILURE TO ATTAIN PERFORMANCE STANDARDS

31. In the event that EPA determines that additional response activities are necessary to meet applicable Performance Standards, EPA may notify Respondents that additional response actions are necessary.

32. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet any applicable Performance Standards, Respondents shall submit for approval by EPA a work plan for the additional response activities. The plan shall conform to the applicable requirements of Sections X and XVII of this Order, and the Statement of Work attached hereto. Upon EPA's approval of the work plan pursuant to Section XV, Respondents shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

XII. EPA PERIODIC REVIEW

33. Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under Section 121(c) of CERCLA. As a result of any review performed under this paragraph, the Respondents may be required to perform additional Work or to modify Work previously performed.

XIII. ADDITIONAL RESPONSE ACTIONS

34. EPA may determine that in addition to the Work identified in this Order, additional response activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondents to submit a work plan for additional response activities. EPA also may require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

35. Not later than thirty (30) days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondents shall submit a work plan for the response activities to EPA for review and approval in accordance with Section XV below. Upon approval by EPA, the work plan shall be deemed incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondents shall implement the work plan according to the standards, specifications, and schedule in the approved work plan. Respondents shall notify EPA of their intent to perform such additional response activities within seven (7) days after receipt of EPA's request for additional response activities.

XIV. ENDANGERMENT AND EMERGENCY RESPONSE

36. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify the RPM or, if the RPM is unavailable, the Chief of Western New York Superfund Section I, New York/Caribbean Superfund Branch I of the Emergency and Remedial Response Division, EPA Region II. Respondents shall take such action in consultation with the RPM and in accordance with all applicable

provisions of this Order, including but not limited to the Health and Safety Plan.

37. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XV. EPA REVIEW OF SUBMISSIONS

38. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in subparagraphs (a) or (b) of this paragraph.

39. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

40. Upon receipt of a notice of disapproval or a request for a modification, Respondents shall, within twenty-one (21) days or such other time as may be specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

41. If upon the first resubmission or upon any subsequent resubmission, the plan, report or other item is disapproved by EPA, Respondents shall be deemed to be out of compliance with this Order. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require that Respondents correct the deficiencies, in accordance with the preceding paragraphs of this Section. In addition, or in the alternative, EPA retains the right to amend or develop the plan, report or other item.

42. All plans, reports, and other submittals required to be submitted to EPA under this Order shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Order. In the event EPA approves a portion of a plan, report, or other item required to be submitted to EPA under this Order, the

approved portion shall be deemed to be incorporated in and an enforceable part of this Order.

XVI. REPORTING REQUIREMENTS

43. a. In addition to any other requirement of this Order, Respondents shall prepare and provide to EPA written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (2) include all results of sampling and tests and all other data received by Respondents during the previous month in the implementation of the Work; (3) describe all actions, data and plans which are projected to be commenced or completed during the next month and provide other information relating to the progress of design and construction as is customary in the industry; (4) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Remedial Action, and a description of all efforts made to mitigate those delays or anticipated delays. These reports are to be submitted to EPA by the tenth day of every month following the effective date of this Order.
- b. If the date for submission of any item or notification required by this Order falls upon a weekend or State or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.
- c. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondents shall, within twenty-four (24) hours, orally notify the EPA RPM, or, in the event of the unavailability of the EPA RPM, the Chief of Western New York Superfund Section I, New York/Caribbean Superfund Branch I of the Emergency and Remedial Response Division, EPA Region II, in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, Respondents shall furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.
- d. All reports and other documents submitted by Respondents to EPA (other than the monthly progress reports discussed above) which purport to document Respondents' compliance with the terms of this Order

shall be signed by a responsible corporate official of one or more of the Respondents.

XVII. COMPLIANCE WITH APPLICABLE LAWS

44. All activities performed by Respondents pursuant to this Order shall be performed in accordance with the requirements of all federal and State laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan.

45. Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or State permit or approval, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

46. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

47. a. All off-Site transfer, treatment, storage, or disposal of Waste Material by Respondents must be in compliance with the applicable requirements of the Resource Conservation and Recovery Act, ("RCRA") 42 U.S.C. § 6901, et seq., Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as well as their implementing regulations, and all other applicable laws, including, but not limited to, 40 CFR Parts 262 and 263 and 6 NYCRR Part 372. Furthermore, Respondents shall provide notice to EPA of any facilities that Respondents propose to use for such off-Site transfer, storage, treatment, or disposal at least five (5) business days prior to the commencement of any such use, and shall obtain approval by EPA's RPM of the use of such facilities. Any and all off-Site disposal activities conducted by Respondents under this Order shall be performed in conformance with the NCP (including Section 300.440 of the NCP, 40 C.F.R. § 300.440) and any amendments thereto.

b. If Waste Material from the Site is to be shipped to a waste management facility outside of New York State, Respondents shall provide prior written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state (with a copy to the EPA RPM). However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

Respondents shall include in the written notification the following information: (i) the name and location of the facility to which the Waste Material is to be shipped; (ii) the type and quantity of the Waste Material to be shipped; (iii) the expected schedule for the shipment of the Waste Material; and (iv) the method of transportation. Respondents shall provide such notification to the receiving facility's state and to EPA in writing as soon as practicable, but in any event at least ten (10) business days prior to the said shipments. Respondents shall notify the receiving facility's state of major changes in their shipment plan, such as a decision to ship the Waste Material to another facility within the same state.

XVIII. REMEDIAL PROJECT MANAGER, NOTIFICATION

48. EPA has designated the following individual as its RPM for the Site:

Young Chang
New York/Caribbean Superfund Branch I
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II
290 Broadway, 20th Floor
New York, N.Y. 10007-1866
(212) 637-4351

49. EPA has the unreviewable right to change its RPM. If EPA changes its RPM, EPA will inform Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager.

50. The RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator by the NCP. The RPM shall have authority, consistent with the NCP, to halt any work required by this Order and to take any necessary response action.

51. Within ten (10) days after the effective date of this Order, Respondents shall designate a Project Coordinator and shall submit the name, address, telephone number, qualifications and job title of the Project Coordinator to EPA for review and approval. Respondents' Project Coordinator shall be responsible for overseeing Respondents' implementation of this Order. If Respondents wish to change their Project Coordinator, Respondents shall provide written notice to EPA five (5) days prior to changing the Project Coordinator, identifying the name and qualifications of the new Project Coordinator. Respondents' selection of a Project Coordinator shall be subject to EPA approval.

52. All plans, reports, notices and other documents required to be submitted to EPA under this Order shall be directed to the following individuals at the addresses specified below:

1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, N.Y. 10007-1866

Attention: Sidney Landfill Superfund Site Attorney

1 copy (or 4 copies if such communication is a plan or report):

Chief, Western New York Superfund Section I
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, N.Y. 10007-1866

Attention: Sidney Landfill Superfund Site Remedial
Project Manager

53. In addition, when submitting to EPA any written communication required hereunder, Respondents shall simultaneously submit 1 copy of that communication (unless the given document is a plan or report, in which case 4 copies shall be submitted) to:

Director, Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, N.Y. 12233-7010

Attention: Sidney Landfill Superfund Site
Project Manager

XIX. COMMUNITY RELATIONS

54. Respondents shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XX. SITE ACCESS AND INSTITUTIONAL CONTROLS

55. a. Respondents shall provide EPA, the State, and their representatives, including contractors, with access at

all reasonable times to the Site and any other property to which access is required to implement this Order, the SOW, or the remedy selected in the ROD, to the extent that the property is owned by, or access to the property is controlled by, any of the Respondents, for the purpose of conducting any activity related to this Order, including, but not limited to, the following activities:

- i. Monitoring the Work;
 - ii. Verifying any data or information submitted to EPA;
 - iii. Conducting investigations relating to contamination or conditions at or near the Site;
 - iv. Obtaining samples;
 - v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - vi. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents;
 - vii. Assessing Respondents' compliance with this Order; and
 - viii. Determining whether the Site is being used in a manner that is prohibited or restricted by Paragraph 56 of this Order or the Institutional Controls established pursuant to this Order.
- b. If EPA so requests, in regard to property owned or controlled by one or more of the Respondents to which access is needed to implement this Order, the SOW, or the remedy selected in the ROD, for each parcel of property such Respondent shall record in the Registry of Deeds of Delaware County, New York, access easements that grant to one or more of the following persons or entities, as directed by EPA:
- i. the United States, on behalf of EPA, and its representatives,
 - ii. the State and its representatives,

- iii. the other Respondent and its representatives, or
- iv. other appropriate grantees,

a right of access, running with the land, for the purpose of conducting any activity related to this Order including, but not limited to, those activities listed in Subparagraph a. of this Paragraph. Respondents shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

- i. Draft access easements that are enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and
- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of EPA's approval and acceptance of such easements, Respondents shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the easements with the Registry of Deeds of Delaware County. Within thirty (30) days of filing the easements, Respondents shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded easements showing the clerk's recording stamps.

- c. To the extent that the Site or any other property to which access is required to implement this Order, the SOW, or the remedy selected in the ROD is owned or controlled by persons other than a Respondent, Respondents shall use best efforts to secure from such persons access thereto for Respondents, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Order including, but not limited to, those activities listed in Subparagraph a. of this Paragraph.

- d. If EPA so requests, to the extent that the Site or any other property to which access is required to implement this Order, the SOW, or the remedy selected in the ROD is owned or controlled by persons other than a Respondent, Respondents shall also use best efforts to secure from such persons the recordation in the Registry of Deeds of Delaware County, New York, of access easements that grant to one or more of the following persons or entities, as directed by EPA:

- i. the United States, on behalf of EPA, and its representatives,
- ii. the State and its representatives,
- iii. the other Respondent and its representatives, or
- iv. other appropriate grantees,

a right of access to the property, running with the land, for the purpose of conducting any activity related to this Order, including, but not limited to, those activities listed in Subparagraph a. of this Paragraph. If such access easements are requested, Respondents shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

- e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access and/or access easements. If any access required by Subparagraph c. is not obtained within 45 days of the effective date of this Order, or within 45 days of the date EPA notifies the Respondents in writing that additional access beyond that previously secured is necessary, or if any access easements requested by EPA under Subparagraph d. are not submitted to EPA in draft form within 45 days of a request by EPA for such easements, Respondents shall promptly notify EPA in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Respondents have taken to attempt to obtain access or access easements. EPA may, as it deems appropriate, assist Respondents in obtaining access or access easements.

56. a. Respondents shall refrain from using the Site (or any other property affected by the remedy selected in the ROD) in any manner, or engaging in any other activities, that would interfere with or adversely affect the overall integrity or protectiveness of any

of the remedial measures to be implemented pursuant to this Order. For example, Respondents shall not:

- i. install or use any groundwater wells at the Site, except as specifically approved by EPA for the implementation of the Work; or
 - ii. undertake any future use of the Site which would adversely affect the integrity of the caps that are to be installed as part of the remedy.
- b. If EPA so requests, in regard to property owned or controlled by one or more of the Respondents, at which Institutional Controls are needed, each such Respondent shall 1) grant to one or more of the following persons or entities, as directed by EPA:
- i. the United States, on behalf of EPA, and its representatives,
 - ii. the State and its representatives,
 - iii. the other Respondent and its representatives, or
 - iv. other appropriate grantees,

and 2) record in the Registry of Deeds of Delaware County, New York, Institutional Controls in the form of deed restrictions, running with the land, that impose the prohibitions and restrictions established by Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Order. Respondents shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

- i. Draft deed restrictions that are enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and
- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of EPA's approval and acceptance of such deed restrictions, Respondents shall

update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the deed restrictions with the Registry of Deeds of Delaware County. Within thirty (30) days of filing the deed restrictions, Respondents shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded deed restrictions showing the clerk's recording stamps.

- c. To the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than a Respondent, Respondents shall use best efforts to secure a commitment by such persons to abide by the prohibitions and restrictions established by Subparagraph a. of this Paragraph.
- d. If EPA so requests, to the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than a Respondent, Respondents shall also use best efforts to secure from such persons the 1) granting to one or more of the following persons or entities, as directed by EPA:
 - i. the United States, on behalf of EPA, and its representatives,
 - ii. the State and its representatives,
 - iii. the other Respondent and its representatives, or
 - iv. other appropriate grantees,and 2) recordation in the Registry of Deeds of Delaware County, New York, of Institutional Controls in the form of deed restrictions, running with the land, that impose the prohibitions and restrictions established by Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Order. If such deed restrictions are requested, Respondents shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.
- e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of Institutional Controls in the form of commitments or

deed restrictions. If any commitments required under Subparagraph c. are not obtained within 45 days of the effective date of this Order, or any deed restrictions requested by EPA under Subparagraph d. of this Paragraph are not submitted to EPA in draft form within 45 days of EPA's request for such deed restrictions, Respondents shall promptly notify EPA in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Respondents have taken to attempt to obtain such commitments or deed restrictions. EPA may, as it deems appropriate, assist Respondents in obtaining such commitments or deed restrictions.

- f. If EPA determines that land and/or water use restrictions in the form of state or local laws, regulations or ordinances are needed to implement the remedy selected in the ROD, ensure the overall integrity and protectiveness thereof, or ensure non-interference therewith, Respondents shall cooperate with EPA's efforts to obtain such governmental controls.

57. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XXI. ACCESS TO INFORMATION AND RECORD PRESERVATION

58. Respondents shall provide to EPA upon request, copies of all documents and information within their possession and/or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

59. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim

accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the State without further notice to Respondents. Respondents shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

60. Respondents shall maintain for the period during which this Order is in effect an index of documents that Respondents claim contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

61. Until ten (10) years after EPA provides notice pursuant to paragraph 79, below, of the satisfactory completion of the Work, Respondents shall preserve and retain, and shall instruct their contractors, subcontractors, and anyone else acting on Respondents' behalf with respect to the Site to preserve and retain, all records, documents, and information of whatever kind, nature, or description now in their possession or control or which come into their possession or control that relate in any manner to the Site or the Work conducted at the Site. At the conclusion of this document retention period, Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such records, documents or information, and upon request by EPA, Respondents shall deliver all such records, documents and information to EPA.

XXII. DELAY IN PERFORMANCE

62. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to perform all obligations fully under the terms and conditions of this Order.

63. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM within forty-eight (48) hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that have been or will be taken to mitigate the effect of the delay. Increased costs or

expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK

64. Respondents shall demonstrate their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within ninety (90) days of the effective date of this Order, one of the following; (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondents have sufficient assets available to perform the Work. Respondents shall demonstrate financial assurance in an amount no less than the estimate of cost for the remedial design and remedial action contained in the Record of Decision for the Site. If Respondents seek to demonstrate ability to complete the remedial action by means of internal financial information, or by a guarantee of a third party, they shall resubmit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondents shall, within thirty (30) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

65. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XXIV. UNITED STATES NOT LIABLE

66. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXV. ENFORCEMENT AND RESERVATIONS

67. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States in connection with the Site. This reservation shall include but not be limited to past costs, future costs, direct costs, indirect costs, the costs of oversight, as well as accrued interest as provided in Section 107(a) of CERCLA.

68. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

69. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, or any other applicable law.

70. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

71. Respondents shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$25,000 for each day in which Respondents willfully violate, or fail or refuse to comply with this Order without sufficient cause. In addition, failure to properly carry out response actions under this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of, any costs incurred by EPA as a result of such failure to take proper action.

72. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

73. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXVI. EFFECTIVE DATE AND COMPUTATION OF TIME

74. This Order shall be effective eleven (11) days after receipt by Respondents, unless a conference is requested pursuant to paragraph 76, below. If such conference is timely requested, this Order shall become effective three (3) days following the date the conference is held, unless the effective date is modified by EPA. All times for performance of ordered activities shall be calculated from this effective date.

XXVII. APPENDICES

75. The following appendices are attached to and incorporated into this Order:

- a. "Appendix I" is the ROD.
- b. "Appendix II" is the Statement of Work.

XXVIII. OPPORTUNITY TO CONFER

76. Respondents may, within ten (10) days after receipt of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within seven (7) days of Respondents' request for a conference.

77. The purpose and scope of the conference shall be limited to issues involving the implementation of the Work required by this Order and the extent to which Respondents intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative.

78. Requests for a conference must be by telephone to Brian E. Carr, Assistant Regional Counsel, Office of Regional Counsel, EPA Region II, telephone (212) 637-3170, followed by written confirmation mailed that day to Mr. Carr and the RPM at the addresses set forth in Section XVIII of this Order.

XXIX. TERMINATION AND SATISFACTION

79. This Order will be terminated by EPA if Respondents demonstrate in writing and certify to the satisfaction of EPA that all Work and activities required under this Order, including any additional work required by EPA, have been performed fully in accordance with this Order and EPA has approved the certification in writing. Such an approval by EPA, however, shall not relieve Respondents of any remaining obligations under the Order,

including those requirements set forth in Section XXI regarding record preservation. Respondents' written submission under this paragraph shall include a sworn statement by a responsible corporate official(s) of one or more of the Respondents which states the following: "I certify that the information contained in or accompanying this submission is true, accurate and complete".

So Ordered, this 5 day of July, 1996.

BY: William J. Fox
Jeanne M. Fox
Regional Administrator
U.S. Environmental Protection Agency, Region II